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SUBJECT: BLOWBACK PREDICTED IF DOMINICAN EXTRADITION  
REQUEST FAILS

11. Summary. Accused cop-killer and top-wanted Dominican fugitive Jeffry Alejandro Pena Bencosme remains in custody in New York while fighting extradition to the Dominican Republic. A combination of legal maneuvering and doubts about the Dominican claims have caused the hearing to morph into a "mini-trial" - a rarity in an extradition case. Embassy has already seen a degree of discontent among members of both the Dominican Attorney General's Office and the Dominican Supreme Court based on perceptions of unreasonable delay and a failure to fully understand concepts of judicial independence and separation of powers in the United States. Embassy predicts highly-negative press play and likely blowback in higher than average denial of extradition cases should the extradition of Pena ultimately be denied. End summary.

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12. Background  
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Pena is accused of murder in the October 25, 2004, shooting death of a policeman in the city of Santiago. The facts of the case indicate that Pena was stopped for public urination outside of a bar by a police sergeant, engaged in a verbal confrontation, and then drew a weapon and shot the sergeant in the chest, killing him.

Though he was quickly apprehended, Pena was not placed in custody pending trial and fled the Dominican Republic for New York in mid-November 2004. An arrest warrant was issued for Pena by the Penal Chamber of the Appellate Court of the Judicial Department of Santiago, Dominican Republic on December 6, 2004.

While the initial inability of the Dominican government to provide information regarding Pena's possible location caused significant investigative delays (the government simply alleged that Pena was in Brooklyn, New York), continued cooperation with the Dominican government and intense work by the U.S. Federal Bureau of Investigation, the U.S. Marshals Service, and the New York - New Jersey Regional Fugitive Task Force led to Pena's eventual arrest outside his Brooklyn residence on December 6, 2006.

Since that time, Pena has been held in U.S. custody while challenging his extradition before federal Magistrate Judge

Steven Gold. Pena has skillfully played the system to date, dismissing counsel when decisions were going against him, filing late motions pro se (knowing that the Court would extend every possible deference to a pro se defendant), and ultimately retaining new counsel.

In the latest conference before Magistrate Gold on September 27, 2007, the Magistrate took the unusual step of ordering live witness testimony and scheduled the next hearing for October 10, 2007. As defense witnesses will be unable to appear in New York State (because of an inability to obtain non-immigrant visas), the current plan is for the Embassy to facilitate their testimony via digital video conference.

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### 13. The Standard

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Typically, extradition hearings are relatively simple legal proceedings. The State presents evidence designed to: 1) demonstrate that the subject before the Court is indeed the subject requested (identity), 2) that the crime alleged is covered by the extradition treaty, and 3) that there is "probable cause" that the subject committed the crime in question. Proof of all three are necessary for extradition to be granted. While the defense may also offer evidence, it must limit its submission to these three questions and the evidence must be explanatory and not contradictory in nature.

Moreover, the defense may not offer an affirmative defense (e.g., self-defense). Probable cause is a relatively low legal standard and is normally fairly easy to satisfy. A typical definition of the term referenced in cases of the U.S. District Court for the Southern District of Florida states: "Probable cause means that there is evidence sufficient to cause a person of ordinary prudence and caution

to conscientiously entertain a reasonable belief of the guilt of the accused."

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### 14. Defense Challenge

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Pena's attorneys, after repeatedly and improperly attempting to directly introduce an affirmative defense (i.e., self-defense), have now shifted tack and will present testimony from 2 witnesses swearing that the declarations submitted by the Dominican government in support of the extradition request do not accurately reflect the statements they originally gave to Dominican investigators. While the testimony will likely result in the "self-defense" argument coming in the back door, it is purportedly offered to challenge the probable cause requirement detailed above. Evidence of recanted testimony is explicitly permitted and has been described in some federal districts as evidence that "obliterates" probable cause.

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### 15. Dominican Credibility

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Although this type of argument is not always successful, a recanted testimony argument may have greater traction in the instant case: the credibility of the Dominican government in extradition cases has already been effectively shattered by a disastrous 2005 Dominican request for the extradition of alleged fraudster Shlomo Ben Tov (aka Sam Goodson). Bypassing the details of the Dominican allegations in that case, it is sufficient to note that a Magistrate Judge of the U.S. District Court for the Southern District of Florida found such irregularities in the Dominican submissions to declare that he had "no confidence in the reliability of the submissions of the Dominican Republic" and, moreover, that there was suggestion of purposeful misrepresentation that "could rise to the level of fraud on the Court."

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### 16. Dominican Discontent and Confusion

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Discontent was high after the Ben Tov decision, with numerous nationalist press pieces decrying a "one-way" extradition agreement (i.e., from the Dominican Republic to the United States) and at least one high-ranking Dominican justice official suggesting shortly afterward that it was a challenge to remain motivated in processing U.S. extradition requests. That same official suggested that Secretary Rice speak to the Chief Justice of the U.S. Supreme Court, so that the Chief Justice could then instruct Magistrate Judges to "go easy" on Dominican requests for extradition. Despite lengthy explanations regarding why this would and could not occur, this official, likely joined by many others, persists in the belief that U.S. failure to extradite Dominican fugitives is nothing less than lack of U.S. political will. Embassy predicts Dominican reaction to a second refusal will only be amplified.

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17. Summary  
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Given the history of this case and the precedent established by the failed Ben Tov request, Embassy thinks it prudent to begin exploring possible points in the event that Pena's case ultimately fails. Preparation will enable all agencies involved in law enforcement cooperation in the Dominican Republic, as well as Department/agency spokespersons to speak authoritatively and defuse tensions in the event that this latest Dominican extradition request is denied.  
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